

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2001-006342

03/02/2006

HONORABLE EILEEN WILLETT

CLERK OF THE COURT
D. Monroe
Deputy

IN RE THE MARRIAGE OF
CYNTHIA LEE THIMMESCH

FILED: 03/09/2006

TERI D MCCALL

AND

PETER ALLAN THIMMESCH

PETER ALLAN THIMMESCH
11337 STONEHOUSE PLACE
POTOMAC FALLS VA 20165

JOHN J TOMA PH D
2345 E THOMAS RD STE 275
PHOENIX AZ 85016
EXPEDITED SERVICES-CCC
RONN LAVIT PH D
1130 E MISSOURI STE 570
PHOENIX AZ 85014

ORDERS ENTERED BY THE COURT;
RULING ON UNDER ADVISEMENT

On April 19, 2005, Mother filed her Petition for Order to Show Cause Re: Modification of Custody. Father was served May 17, 2005. Father filed his Response on January 9, 2006. On November 8, 2005, Mother filed her Petition for Contempt. All issues raised were consolidated for hearing. Evidentiary Hearing was held January 10, 2006. The matter was deemed submitted for decision.

The Court has considered the testimony of the witnesses, exhibits entered into evidence, the legal file, and all information presented. The Court issues the following additional findings and orders:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2001-006342

03/02/2006

between the parties. He noted that Father was uniformly critical of Mother's parenting and decision-making and was also critical of physicians, psychologists, and dentists seen by the children. Father did not deny making derogatory statements about the children's therapists to the children. Father presented as hyper-verbal and rationalized his hostility when he became frustrated. Dr. Yee corroborated Mother's difficulties in communicating with Father and recommended Mother be designated as decision-maker.

Father testified that he now is in agreement with Andrew's ADHD with oppositional defiant disorder diagnosis. He believed Mother had not had the child comprehensively evaluated. He disputes Mother's care of Andrew, not Becca. He stated that both parents should utilize the Family Court Advisor and continue to make joint decisions. Father expressed that the checks and balances afforded through joint legal custody are helpful. He acknowledged a prior history of anger toward Mother and threatening behavior, but believes such behavior ceased in 2002. He agrees that Mother should be final decision-maker, but requests that there be discussion between him and Mother prior to final decision. Father suggested co-parenting counseling.

The Court finds that there has been a substantial and continuing change in circumstances since the Decree of Dissolution was entered in 2002. The parents have demonstrated a past, present, and future inability to cooperate in decision-making about the children to the extent required by an order of joint custody. Father has engaged in a pattern of behavior that has sabotaged Mother's decision making and adversely affected the physical and emotional well-being of the children. Father has refused to participate in a psychological evaluation as ordered, and his mental health is at issue based upon reports reviewed. A joint legal custody order is not feasible for the parties and has negatively impacted the children. Mother has not requested a reduction in parenting time for Father and has been final decision-maker for the children. Her decisions have been sound. Father harassed Mother, alienated the children from Mother, interfered with the children's medical and psychological treatment, failed to comply with Court orders, and negatively impacted the children's adjustment to home, school, and community. Father's desire to share joint legal custody is influenced by issues unrelated to the best interests of his children.

The Court has considered all relevant factors including factors set forth in A.R.S. §25-403 and finds that an award of sole legal custody to Mother is in the best interests of the minor children.

IT IS ORDERED awarding Cynthia Lee Thimmesch sole legal custody of the parties' minor children: Andrew Bruss Thimmesch born June 3, 1993, and Rebecca Palen Thimmesch, born February 27, 1996.

Mother shall remain primary residential parent. Prior orders regarding Father's access time are affirmed contingent upon Father's support and compliance with medical and psychological treatment for the children as determined by the children's attending physicians,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2001-006342

03/02/2006

mental health providers, and Mother, and educational requirements as determined by the children's teachers as well as Mother.

IT IS FURTHER ORDERED affirming prior orders regarding the Family Court Advisor.

CONTEMPT:

The Court finds that a valid order for a psychological evaluation has been issued. The Court further finds that Father was well aware of the order and had the financial ability to comply with the Court's orders in a timely manner. Father has consistently failed to do so. Father's failure to provide requested psychological information through the ordered evaluation negatively impacts the children and impedes the ability of the Family Court Advisor to assist the parties.

IT IS THEREFORE ORDERED suspending Father's parenting time pending compliance with the Court's order modified as follows:

IT IS FURTHER ORDERED that Father participate in and successfully complete all psychological testing recommended by Dr. Toma.

IT IS FURTHER ORDERED appointing Ronn Lavit, Ph.D., to conduct said testing and a full psychological evaluation of Father. By separate mailing, the Court provides Dr. Lavit with a copy of the Court's November 23, 2004 minute entry delineating the nature of the recommended testing and defers to Dr. Lavit for any further tests he deems appropriate. Father shall be solely responsible for the costs of his evaluation. The matter shall be fully set forth by way of separate minute entry.

Upon compliance with the Court's order herein, Father shall file a notice of completion with the Clerk of the Court with attached verifying documentation, a copy to counsel, and a copy to the Court.

IT IS FURTHER ORDERED that Father participate in and complete any recommended treatment by Dr. Lavit as set forth by Dr. Lavit. All out-of-state providers shall be approved by Dr. Lavit or the Family Court Advisor. Unless contraindicated by Dr. Lavit, Father's access time may resume upon completion of the full psychological evaluation with Dr. Lavit and the filing of the Notice of Completion with attached verifying reports.

ATTORNEY'S FEES:

The Court has considered the financial resources of both parties in accordance with A.R.S. § 25-324, and good cause appearing,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2001-006342

03/02/2006

IT IS FURTHER ORDERED awarding Mother her reasonable attorney's fees and costs incurred herein.

IT IS FURTHER ORDERED that counsel for Mother shall file a *China Doll* affidavit within 30 days of the filing of this order.

EXPEDITED SERVICES:

IT IS FURTHER ORDERED referring the parties to Expedited Services for arrearage calculations regarding child support, spousal maintenance, and unreimbursed medical expenses, if any.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HONORABLE EILEEN WILLETT

JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Exhibit Worksheet.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/ssc/sschome.html>.